

DELTA PROTECTION COMMISSION

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**AGENDA ITEM #14**

July 14, 2000

To: Delta Protection Commission
From: Lori Clamurro, Delta Protection Commission Staff
Subject: San Luis Drain Update

BACKGROUND

The San Luis Drain, a federal facility, was designed to convey and dispose of subsurface irrigation return flows from the San Luis service area. Only the southernmost 87 miles have been constructed; the planned drain was to be a 188-mile concrete lined canal. The original project was to start in southern Fresno County and terminate at the western edge of the Delta at Chipps Island, west of the City of Pittsburg.

In December 1994, Judge Wanger of U.S. District Court ruled that the Bureau of Reclamation had illegally neglected its responsibility to provide drainage for the San Luis Unit and directed the Bureau to apply for a Waste Discharge permit from the State Water Resources Control Board. The judge left designation of the drain discharge location to the Secretary of the Interior and Congress.

On July 27, 1995, the Commission adopted Resolution 95-3 (attached), which urges Commission participation in discussion of options to dispose of agricultural drainage from the San Luis Unit.

UPDATE

On February 4, 2000, the 9th Circuit Court of Appeals reversed Judge Wanger's decision.

On February 29, 2000, several Bay Area Congressmembers sent a letter to Interior Secretary Babbitt asking that he renounce the completion of the San Luis Drain as a "solution" to drainage problems in the San Joaquin Valley (attached). On June 16, 2000, David Hayes, Deputy Secretary of the Interior, agreed that completion of the original drain project would present very serious environmental problems (attached). The Department of Interior is interested in working with regional drainage management authorities and/or other agencies regarding alternatives to address agricultural drainage problems on the west side of the San Joaquin Valley.

The State Water Resources Control Board and Westlands Water District are jointly retaining a consultant to develop a range of alternatives to address drainage issues; two planning teams are being interviewed.

STAFF RECOMMENDATION

Staff recommends that the Commission continue to monitor all planning processes associated with disposal of drainwater, and participate in any discussions or hearings, as directed in Resolution 95-3.

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RESOLUTION 95-3

REGARDING THE SAN LUIS DRAIN

WHEREAS, the Sacramento-San Joaquin Delta (Delta) is a natural resource of statewide, national, and international significance, containing irreplaceable resources, and it is the policy of the State to recognize, preserve, and protect those resources of the Delta for the use and enjoyment of current and future generations; and

WHEREAS, the basic goals of the State for the Delta include protecting, maintaining, and where possible enhancing and restoring the overall quality of the Delta environment; and

WHEREAS, the Delta's wildlife and wildlife habitats, including waterways, vegetated unleveed channel islands, wetlands, and riparian forests and vegetation corridors are highly valuable providing critical wintering habitat for waterfowl and other migratory birds using the Pacific Flyway as well as certain plant species, various rare and endangered wildlife species of birds, mammals, and fish, and numerous amphibians, reptiles, and invertebrates, that these wildlife species and their habitat are valuable, unique, and irreplaceable resources of critical statewide significance and that it is the policy of the State to preserve and protect these resources and their diversity for the enjoyment of current and future generations; and

WHEREAS, the resource values of the Delta have deteriorated and that further deterioration threatens the maintenance and sustainability of the Delta's ecology, fish and wildlife populations, recreational opportunities, and economic productivity; and

WHEREAS, the Delta Protection Commission has prepared and adopted a Land Use and Resource Management Plan for the Primary Zone of the Delta which recommends that programs to enhance the natural values of the State's aquatic habitats and water quality will benefit the Delta and should be supported, and recommends that water quality at Delta drinking water intakes should be maintained or enhanced; and

WHEREAS, historically, Central Valley agricultural wastewaters were released into the Kesterson Reservoir resulting in loss of wildlife and ultimately resulting in the closing of both the San Luis Drain and the Kesterson Reservoir in 1985; and

WHEREAS, the U.S. Bureau of Reclamation has been working with landowners to minimize the volume of agricultural drainage water and develop other methods to address this matter "in-Valley"; and

WHEREAS, on December 2, 1994 Judge Oliver Wagner of the U.S. District Court found that the Bureau of Reclamation has an obligation to provide drainage to the San Luis Unit and directed the Bureau to apply for a discharge permit for the San Luis Drain; and

WHEREAS, the Commission strongly considered adopting a position of absolute prohibition of Delta disposal due to concerns related to water quality impacts; and

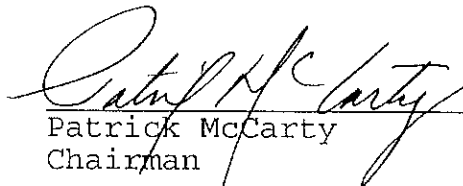
WHEREAS, the Bureau of Reclamation will develop a range of options to address disposal of agricultural drainage generated by the San Luis Unit; and

WHEREAS, the State Water Resources Control Board will hold hearings on options developed by the Bureau of Reclamation; and

WHEREAS, other public agencies may hold hearings, workshops, and other public negotiations and meetings regarding long-term resolution of agricultural drainage generated by the San Luis Unit;

THEREFORE BE IT RESOLVED, the Delta Protection Commission will participate in and take positions on various proposed options to address disposal of agricultural drainage from the San Luis Unit before the State Water Resources Control Board or any other body holding similar deliberations, with the intent of ensuring that any preferred option will enhance the natural values of the State's aquatic habitats and maintain or enhance water quality of the Delta, especially at drinking water intakes.

Adopted on July 27, 1995.


Patrick McCarty
Chairman

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[Bills Introduced
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News From **CONGRESSMAN GEORGE MILLER**

7th District, California CONTACT: [John Lawrence](#)

1329 Longworth House Office Building, Washington, D.C. 20515
Phone: (202) 225-6065 FOR IMMEDIATE RELEASE

LEGISLATORS TELL INTERIOR SECRETARY TO ABANDON PLANS FOR SAN LUIS DRAIN

Tuesday, February 29, 2000

WASHINGTON, DC – Eleven members of the California delegation led by Congressman George Miller (D-Martinez) today called on Interior Secretary Bruce Babbitt to abandon any plans by the federal government to build a canal to dump polluted waste water from Central Valley farms into the Sacramento-San Joaquin Delta and San Francisco Bay.

The legislators, including Senators Dianne Feinstein and Barbara Boxer, called the proposed San Luis Drain "an unacceptable facility that poses a serious danger to the water quality and ecological health" of the Bay Area, and declared that they are "strongly opposed to its construction."

They noted numerous studies that identified alternative ways to address the Valley's continuing waste water problems which, in 1985, led to the closure of the Kesterson refuge where toxic drainage water caused deaths and gross deformities in birds. On February 4, the Ninth Circuit Court of Appeals ruled in *Firebaugh Canal Co. v. United States* (No. 95-15300, U.S. App. 9th Circ.) that while the government needed to provide drainage to contractors, there is no obligation to construct the San Luis Drain to achieve that goal.

"We welcome the decision of the Court of Appeals in finding that the Department is not required to build the San Luis Drain to the Delta as the means of providing drainage service to the San Luis Unit," they wrote to Babbitt. "We call on you to renounce the completion of the San Luis Drain as a 'solution' to drainage problems in the San Joaquin Valley."

They also noted that over the past 40 years, task forces, blue-ribbon panels of experts, and interagency study teams have looked at alternatives to the Drain which include reduced irrigation, treatment, and water conservation. Departmental efforts should now be expended on implementation of such initiatives instead of continuing to study the Drain or apply for discharge permits in the Delta.

Miller has led efforts to oppose construction of the Drain, which he has termed "a dagger pointed at the heart of the Delta," for more than two decades, and has repeatedly included a provision in annual appropriations bills barring the Department from constructing the facility. A 1995 decision by a U.S. district court, however, had sided with irrigators and led to increased efforts by the government to plan the highly controversial facility.

In addition to Miller and the senators, the other signatories of the letter to Babbitt include: Rep. Nancy Pelosi (D-San Francisco); Rep. Ellen Tauscher (D-Pleasanton); Rep. Pete Stark (D-Hayward); Rep. Sam Farr (D-Carmel); Rep. Anna Eshoo (D-Atherton); Rep. Lynn Woolsey (D-Petaluma); Rep. Barbara Lee (D-Oakland); and Rep. Tom Lantos (D-San Mateo).

Attached is a copy of the letter from the California delegation to Interior Secretary Bruce Babbitt.

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Congress of the United States
House of Representatives
Washington, DC 20515

February 29, 2000

The Honorable Bruce Babbitt
Secretary of the Interior
Washington, D.C. 20240

Re: San Luis Drain

Dear Mr. Secretary:

The February 4, 2000 decision by the Ninth Circuit Court of Appeals (Firebaugh Canal Co. v. United States, No. 95-15300, U.S. App. 9th

Circ.) reversed Judge Wanger's 1995 injunction that ordered the government to pursue construction of the San Luis Drain to the Delta. We welcome the decision of the Court of Appeals in finding that the Department is not required to build the San Luis Drain to the Delta as the means of providing drainage service to the San Luis Unit. The Drain has long been, and remains, an unacceptable facility that poses a serious danger to the water quality and ecological health of the Sacramento-San Joaquin Delta and San Francisco Bay, and we remain strongly opposed to its construction.

We believe the Appeals Court decision presents both the Administration and the Congress with unique opportunities to resolve drainage problems in the San Joaquin Valley without endangering aquatic life, wildlife, and water quality by completing the San Luis Drain. We look forward to working with you as you consider alternatives to this project. We believe two actions are needed to begin this process.

First, we call on you to renounce the completion of the San Luis Drain as a "solution" to drainage problems in the San Joaquin Valley. The Appeals Court decision clearly relieves the government of any obligation to complete this facility, which has repeatedly been rejected by the Congress and in nearly forty years of recommendations by task force studies, blue-ribbon panels of experts, and interagency study teams.

Second, the Appeals Court decision raises questions about the Bureau of Reclamation's continued involvement in negotiating a memorandum of agreement (MOU) with the State Water Resources Control Board and the Westlands Water District. Among other things, the MOU would address the details and financing of permit applications and NEPA compliance activities that must be completed before the San Luis Drain could be completed to a terminus in the Sacramento-San Joaquin Delta. We believe that further actions or negotiations on this MOU are no longer appropriate in light of the Appeals Court decision. We are concerned that further action on the MOU would consume valuable resources that would more profitably be spent pursuing environmentally safe and fiscally responsible drainage strategies that do not place the Delta and San Francisco Bay in jeopardy. **We therefore ask that you immediately direct the Bureau of Reclamation to suspend all activity associated with this MOU.**

We look forward to working with your Department, other Federal and State agencies, water users, and others to formulate solutions to the drainage problems in the San Joaquin Valley.

Sincerely,



THE DEPUTY SECRETARY OF THE INTERIOR
WASHINGTON

JUN 16 2000

Honorable Diane Feinstein
United States Senate
Washington, DC 20510

Dear Ms. Feinstein:

I am writing in response to your February 29, 2000, letter concerning the San Luis Drain and the recent Ninth Circuit Court of Appeals (Appeals Court) opinion. Your letter noted that the Appeals Court decision opens the way to unique opportunities to resolve drainage problems in the San Joaquin Valley without undertaking the environmentally damaging course of completing the San Luis Drain into the sensitive Bay Delta.

We agree with your conclusion that the Appeals Court has confirmed Interior's "authority to pursue alternative options other than the interceptor drain to satisfy its duty [to provide drainage] under the San Luis Act." We are gratified that the Appeals Court has recognized our discretion to develop a drainage solution that does not include a drain to the Delta, and we intend to proceed to evaluate and pursue alternatives to the drain.

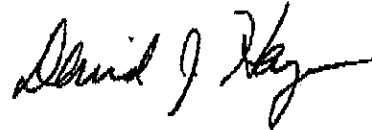
We fully agree that proceeding with the completion of the original drain project would present very serious environmental problems, including potential adverse effects on aquatic life, wildlife, and water quality which may result from the discharge of polluted drainage water into the Delta. Based on such problems, we doubt that the drain would pass muster in any analysis.

Your letter also asked that we refrain from continuing to negotiate a Memorandum of Understanding (MOU) with the State Water Resources Control Board and Westlands Water District regarding the potential continuation of the San Luis Drain. We are no longer working on the MOU that you reference. We are prepared to move forward, however, with discussions with appropriate regional drainage management authorities and/or other agencies, regarding alternatives to address agricultural drainage problems on the westside of the San Joaquin Valley.

In conclusion, we concur with your conclusion that the Appeals Court has confirmed that Interior has the discretion to create and implement a drainage solution, and that this authority presents the Administration and the Congress with unique opportunities to address the drainage problems in the San Joaquin Valley.

We look forward to working with you on this opportunity presented by the Appeals Court opinion to formulate and implement environmentally sound, fiscally responsible, and sustainable solutions to the drainage problems. If you require additional information, please contact Mr. Lester Snow, Regional Director, Bureau of Reclamation Mid-Pacific Region, at (916) 978-5000 or TDD (916) 978-5608.

Sincerely,



David J. Hayes

Identical letters sent to:

Honorable Tom Lantos
United States Senate
Washington, DC 20510

Honorable Barbara Lee
House of Representatives
Washington, DC 20515

Honorable George Miller
House of Representatives
Washington, DC 20515

Honorable Ellen O. Tauscher
United States Senate
Washington, DC 20510

Honorable Barbara Boxer
United States Senate
Washington, DC 20510

